at least with the general background of lottery operations and would not have thought it necessary to mention background matters.

Nevertheless their Lordships are not persuaded by the argument which they have briefly rehearsed that in the case of *this* company a fair and just valuation could not be made on consideration only of the material specifically mentioned in the report, and they stress that no expert evidence was led to suggest that it could not.

Their Lordships do not need to comment on possible developments since 1956 in the law in England concerning ability to go behind a valuation on ground of mistake or error in principle, having regard to the emergence of an ability to sue such a valuer for negligence: see for example *Campbell* v. *Edwards*.[2] For present purposes it appears that the Civil Law Ordinance 1956, section 3, adopted English law as administered at its effective date, so that any subsequent march in English authority is not embodied.

Their Lordships would add this. The learned judge indicated that the mere fact that Price Waterhouse & Co. were nominees of the appellant would or might debar him from attacking their valuation. Since the Federal Court made no comment on this proposition their Lordships think it right to say that they do not agree with it.

Their Lordships are accordingly of opinion that the appeal should be dismissed with costs and will advise the Yang Dipertuan Agung accordingly.

Appeal dismissed.

Solicitors: *Wilson Freeman; Charles Russell & Co.*

A SINGAPORE REPORTS

TAY CHOO WAH v. PUBLIC PROSECUTOR

[A.Cr.J. (Chua J.) June 29, 1976]

[Singapore — Magistrate's Appeal No. 45 of 1975]

Criminal Law and Procedure — Criminal breach of trust by agent — Whether director an agent of the company — Dishonestly disposing of shares of company — Sentence — Penal Code, s. 409.

In this case appellant appealed against his conviction and sentence on a charge under section 409 of the Penal Code. It was alleged that the appellant being entrusted in his capacity as director of a company with 3,000 shares held by that company in another company, had dishonestly disposed of those shares. The appellant had sold the shares at par to Dr. Goh Kim Hua, a nephew of the appellant, and Dr. Goh's wife and mother.

Held: (1) in this case there was ample evidence to show that the appellant was entrusted with the shares in the way of his business as an agent. The appellant was at all material times a director and an agent of the company and he had received the shares and had arranged for their disposal in his capacity as agent;

(2) on the evidence in this case the learned District Judge was right in coming to the decision that the appellant had dishonestly disposed of the shares;

(3) that the sentence in this case was not manifestly excessive.

Cases referred to:—

(1) *Cooray* v. *The Queen* [1953] A.C. 407.

(2) *Reg.* v. *Portugal* (1885) 16 Q.B.D. 487.

(3) *R.K. Dalmia* v. *The Delhi Administration* A.I.R. 1962 S.C. 1821.

(4) *Ferguson* v. *Wilson* (1866) 2 Ch. App. 77, at p. 89.

(5) *Great Eastern Railway Co.* v. *Turner* (1872) 8 Ch. App. 149 at p. 52.

(6) *Teh Lee Ting* v. *Rex* [1956] M.L.J. 194.

(7) *Khoon Chye Hin* v. *Public Prosecutor* [1961] M.L.J. 105.

MAGISTRATE'S APPEAL.

Francis T. Seow for the appellant.

M. D. Sherrard Q.C. (*Allen Yau* with him) for the respondent.

Chua J.: The appellant, Tay Choo Wah, was found guilty by the District Court and convicted on three charges of criminal breach of trust as an agent under section 409 of the Penal Code and was sentenced to eighteen months imprisonment on each charge, the sentences to run concurrently. The case of the prosecution was that the appellant being entrusted in his capacity as Director of Sin Chew Realty Pte. Ltd. with 3,000 shares held by Sin Chew Realty Pte. Ltd. (to which I will hereinafter refer to as "Sin Chew") in Modern Housing Development Pte. Ltd. (to which I will hereinafter refer to as "Modern Housing") dishonestly disposed of those shares.

The appellant was charged with these charges jointly with his father Tay Ah Choon. The trial judge at the commencement of the trial found that Tay Ah Choon was of unsound mind and incapable of making his defence and Tay Ah Choon was released to the care of his wife under the provisions of section 300 of the Criminal Procedure Code and thereafter the trial proceeded against the appellant alone.

The facts are these. Sin Chew was incorporated on August 3, 1955, and Tay Ah Choon, Tay Beng Swee and the appellant were the original subscribers and directors of that company. Tay Beng Swee is a younger brother of Tay Ah Choon, who is the father of the appellant. As at August 6, 1970, Tay Beng Swee held in his own name 2,931 shares and Tay Beng Swee Pte. Ltd., which Tay Beng Swee controlled, held 2,997 shares. The appellant held 1,555 shares in his own name and his father Tay Ah Choon held 1,116 shares in his name. The original authorised share capital was $1 million divided into 10,000 shares of $100 each. Tay Beng Swee had the majority shareholding in Sin Chew. Broadly speaking, Sin Chew can be described as a company dealing in lands of all kinds and in developing lands.

Modern Housing was incorporated on July 5, 1957. The same three Tays were the original subscribers and the original share capital was $1 million divided into 10,000 shares of $100 each. Only 8,003 shares were paid up. As at November 10, 1971, Tay Beng Swee, Tay Ah Choon and the appellant held a share each in their own names and Sin Chew held 3,000 shares and Tay Enterprise Sdn. Bhd. held 1,000 shares and Tay Beng Swee Pte. Ltd. and Tay Ah Choon Pte. Ltd. held 2,000 shares each. The 3,000 shares held in the name of Sin Chew are the subject matters of the three charges against the appellant. Generally speaking, this company carried on the same type of business as Sin Chew's.

At all material times the appellant, his father and Tay Beng Swee were directors of the two companies. These were family businesses run by the three Tays.

Sin Chew and Modern Housing each had some very valuable land interest and two major properties figure in the case. Sin Chew had an interest in 46,525 sq. feet of land at Cairnhill Circle. 17,844 sq. feet of the land was subject to an agreement entered into between Sin Chew and Regency Hotel Ltd., whereby Regency Hotel Ltd. was to build a hotel on that site to be called Regency Hotel (I will refer to it as "the Regency Hotel Site"). It paid half a million dollars by way of advance to Sin Chew and on completion of the hotel the Regency Hotel Ltd. had the option to buy the Regency Hotel Site for $1,380,000.

The main real property asset of Modern Housing was the site of the Oberoi Imperial Hotel in Oxley Rise (I will refer to it as "the Imperial Hotel Site"). Modern Housing had granted a hundred-year lease to Imperial Hotel Ltd. now known as Imperial Securities International Ltd. (I.S.I.).

The two companies prospered and the three Tays and the two companies indulged in tax evasion. By 1971 the Income Tax Department in Singapore was on their trail and the threat of proceedings was in the air.

To avoid being prosecuted Tay Beng Swee fled to Hong Kong sometime in 1971. He left behind in Singapore various documents and in particular share certificates including the 3,000 shares which Sin Chew held in Modern Housing with his niece, Miss Yeo Ah Eng. The 3,000 shares were in three certificates for 1,000 shares each. The result was that the appellant was left in Singapore in effective charge of the two businesses as his father was a sick man.

Sometimes in 1972 it was decided to try and come to an agreement with the Income Tax Department, Singapore. A meeting was held in neutral territory in Bangkok in July, 1972, at which there were present officials of the Income Tax Department, Tay Beng Swee and his legal advisers and the appellant and his legal advisers. The meeting lasted several days. All the Tays acknowledged their liabilities and an agreement with the Income Tax Department was hammered out.

The terms of the agreement were broadly these. The Tays and the two companies were to pay $7.5 million including penalties. By far the larger part of the responsibility was assumed by and levied against Tay Beng Swee himself. Instalment terms were agreed upon — first payment of $1 million was to be made not later than the end of October, 1972; a further payment of $500,000 not later than January 31, 1973; a further payment of $64,500 per month to be paid from February, 1973, until August, 1975. The Comptroller as securities for the instalments required certain shares of certain companies (not Modern Housing shares) to be deposited with him. The Comptroller undertook not to prosecute the Tays and the two companies if and when the $7.5 million were paid over.

On August 3, 1972, the auditors of Modern Housing wrote to Modern Housing asking for certain share certificates to be produced to them for audit purposes.

On August 8, 1972, the appellant, as Director of Modern Housing, wrote to Miss Yeo Ah Eng enclosing a copy of the auditors' letter and requesting that all the share certificates listed in the auditors' letter be produced for the auditors' inspection and at a later date be transmitted to the Income Tax Department. On August 10, 1972, the appellant sent his messenger boy, Abdul Moin, to collect the share certificates. Miss Yeo Ah Eng handed over to him all the share certificates which she had. She typed out a list of the share certificates that she was handing over and Abdul Moin signed the list by way of acknowledgment of receipt. This list included the 3,000 Modern Housing shares in the name of Sin Chew. Abdul Moin checked the list and received the share certificates stated therein from Miss Yeo and subsequently handed them all to the appellant the same day, August 10, 1972.

On September 4, 1972, the appellant sent to his solicitors share certificates which he received from Miss Yeo for onward transmission to the Income Tax Department but he did not send the 3,000 Modern Housing shares. Many of the shares which the Income Tax Department required as security were not sent but others were sent in their place.

On December 18, 1972, the Board of Directors of Sin Chew passed a resolution "that the company's investment of 3,000 shares in Modern Housing Development Private Ltd. be sold at par value....." No name was given of the purchaser or prospective

purchaser. The resolution was signed by the appellant and his father and was not sent to Tay Beng Swee in Hong Kong for signature. The space for Tay Beng Swee's signature was blank with the word "Not in Singapore."

On December 20, 1972, the Board of Directors of Sin Chew passed a resolution "that the Company's sale of 3,000 shares in Modern Housing Development Private Ltd. at par value be made on deferred payment basis and that Mr. Tay Choo Wah be authorised to negotiate and conclude deferred payment sale contracts with the purchasers." The purchasers or prospective purchasers were still unnamed. The resolution was again signed by the appellant and his father and the space for Tay Beng Swee's signature was again blank with the words "Not in Singapore."

Following the resolutions the 3,000 Modern Housing shares owned by Sin Chew were sold at par and transferred to the respective names of Dr. Goh Kim Hwa (1,000 shares), his wife Madam Khoo Swee Huat (1,000 shares) and his mother Madam Tan Loh Teck (1,000 shares). The 3 share transfers were all dated December 30, 1972, and signed by the appellant and his father. The defence conceded that the 3 share transfers were not executed on the date typed thereon namely December 30, 1972. Dr. Goh is a nephew of the appellant by marriage.

The terms of the deferred payment for those 3,000 Modern Housing shares is contained in three identical letters signed by the appellant date December 26, 1972, and signed by Dr. Goh, his wife and his mother respectively by way of confirmation and acceptance of the terms and conditions set out in the letter. The terms in each case were that 10% of the selling price be paid on the transfer of the shares and the balance of 90% of the selling price be paid by monthly instalments of 5% of the selling price. The instalments were to be paid for the first six months after the transfer of the shares and payment of instalments was to commence at the end of the seventh month after the transfer of the shares and interest at the rate of 12% per annum was to be paid from the date of the transfer of the shares. The shares would not therefore be paid up in full until February, 1975.

At the close of the prosecution's case it was submitted on behalf of the defence that there was no case on the facts and the law for the appellant to answer but the learned trial judge held that the prosecution had established a case which, if unrebutted, would warrant a conviction on the charges preferred against the appellant and the court called upon the appellant to enter upon his defence on all the three charges.

The appellant elected to put in a long typed-written statement. In his written statement he said that he proceeded to sell the 3,000 Modern Housing shares and even the Company's car in view of the legal advice of his solicitor Mr. Foo See Juan to get rid of all the remaining assets of Sin Chew. He denied that the sale of the 3,000 Modern Housing shares by his father and him was dishonest. He submitted that the price which he obtained from the sale at that time was a fair and reasonable one.

Counsel for the appellant submitted that under section 409 the entrustment of property must be to a person "in the way of his business as agent" and that these three charges against the appellant are misconceived as the prosecution has not sought to prove and could not have done so that the appellant carried on business as a mercantile agent. Counsel relied entirely on the Privy Council case of *Cooray* v. *The Queen*.[1]

The relevant portion of section 409 reads:

"Whoever, being in any manner entrusted with property or with any dominion over property ... in the way of his business as ... agent, commits criminal breach of trust in respect of that property shall be punished with imprisonment for life, or with imprisonment for a term which may extend to ten years, and shall also be liable to fine."

In *Cooray's* case the Privy Council was dealing with the appeal of the President of the Salpiti Korale Union, a body which supplied goods to retail stores of the Union through wholesale depots, who had been convicted under section 392 of the Penal Code of Ceylon (which corresponds to section 409 of our Penal Code). It was contended before the Privy Council that the offence under section 392 was limited to the case of one who carried on an agency business and did not comprehend a person who was casually entrusted with money either on one individual occasion or a number of occasions, provided that the evidence did not establish that he carried on agency business. The appellant succeeded in his appeal. Their Lordships were of the opinion that the reasoning in the case of *Reg* v. *Portugal*[2] for the view that section 75 of the Larceny Act 1861 (24 and 25 Vict. C 96) was limited to the class of persons mentioned in it was directly applicable to the case they were considering, subject to some material variations and finally said at page 419:

"In enunciating the construction which they have placed on section 392 they would point out that they are in no way impugning the decisions in certain cases that one act of entrustment may constitute a man a factor for another provided he is entrusted in his business as a mercantile agent, nor are they deciding what activity is required to establish that an individual is carrying on the business of an agent."

These observations of the Privy Council were commented on by Raghubar Dayal J. in the Indian Supreme Court case of *R. K. Dalmia* v. *The Delhi Administration*[3] in these terms (at page 1839):

"These observations mean that the view that section 75 was limited to the class of persons mentioned therein did not affect the correctness of the view that a certain act of entrustment may constitute a person a factor for another provided he was entrusted in his business as a mercantile agent. It follows that a certain entrustment, provided it be in the course of business as a mercantile agent would make the person entrusted with a factor, *i.e.* would make him belong to the class of factor. The criterion to hold a person a factor, therefore, is that his business be that of a mercantile agent and not necessarily that he be a professional mercantile agent."

I respectfully agree with the view expressed by Raghubar Dayal J.

In *Dalmia's* case Dalmia was charged under section 409 of the Indian Penal Code (which corresponds with our section 409) that he being the agent in his capacity as Chairman of the Board of Directors of an insurance company and as such being entrusted with dominion over the funds of the insurance company

committed criminal breach of trust of such funds. The submission was that Dalmia was not an agent as contemplated by section 409. The contention was that the word "agent" in this section refers to a "professional agent" *i.e.* a person who carried on the profession of agency and that as Dalmia did not carry on such profession he could not be covered by the expression "agent" in this section. (The same argument is advanced in our case). Reliance was placed on *Cooray's* case. The Supreme Court rejected this submission.

The reasoning in *Dalmia's* case makes it clear that *Cooray's* case can be and was accordingly distinguished.

The authorities are clear that a director of a company is an agent of the company. Cairns L.J. in *Ferguson* v. *Wilson*,[4] said at page 89:

"What is the position of directors of a public company? They are merely agents of a company. The company itself cannot act in its own person, for it has no person; it can only act through directors, and the case is, as regards those directors, merely the ordinary case of principal and agent."

Lord Selborne L.C. in *Great Eastern Railway Co.* v. *Turner*[5] said at page 152:

"The directors are the mere trustees or agents of the company — trustees of the company's money and property — agents in the transactions which they enter into on behalf of the company."

The evidence in this case is that the appellant was at all material times a director and agent of both the companies, Sin Chew and Modern Housing, and he was also the Secretary of the two companies and that that was his full time business occupation. It is proved that he acted directly and effectively in relation to all material aspects of the companies' affairs; that he received the 3,000 Modern Housing shares in his capacity as agent and in disposing of them he acted for Sin Chew and that he signed resolutions and wrote letters. He negotiated terms as to price and as to deferred payment and travelled to Petaling Jaya to see Dr. Goh, his wife and his mother. In all these matters he was an agent.

Whether a person is entrusted with property or with any dominion over property in the way of his business as an agent is a question of fact. Here there is ample evidence to prove the case against the appellant in this respect and there is no evidence to the contrary.

It is contended on behalf of the appellant that it was the bounden duty of the prosecution to call Tay Beng Swee as a witness. It is stated that there were a number of material matters in which Tay Beng Swee was involved and on which he would be cross-examined by the defence. It is submitted that not only does an adverse inference arise against the prosecution case from his non-production as a witness but it casts a serious reflection on the fairness of the trial and the appellant was considerably prejudiced in his defence and the conviction cannot stand.

It is well settled that in a criminal case the prosecuting counsel, provided there is no wrong motive, has a discretion as to whether or not to call any particular witness. The question whether it is incumbent on the prosecution to call as witnesses all persons from whom statements have been taken was considered in the case of *Teh Lee Tong* v. *Rex*[6] and in the case of *Khoon Chye Hin* v. *Public Prosecutor*[7] and the position was summarised in the judgments.

Tay Beng Swee is not the complainant in this case. The prosecution had the responsibility of deciding which witnesses were to be called as being necessary to prove the necessary ingredients of the offence. The prosecution had indicated to the defence on the fifth day of the trial, well before the close of the case for the prosecution, that it did not propose to call Tay Beng Swee. Although it was stated by counsel for the appellant that the appellant was told by his uncle Tay Beng Swee to sell all the properties and assets of the companies, it was not suggested that Tay Beng Swee had authorised the disposal of the 3,000 Modern Housing shares at par and in the manner alleged against the appellant. Even if Tay Beng Swee had been in the same breach of duty as the appellant that would not afford the appellant any defence in the circumstances of this case. No where in his written submission had counsel for the appellant suggested any essential matter of defence which Tay Beng Swee was alleged to be able to support or to which his evidence would be material. On the other hand what was made plain was that the defence desired to attack the credibility of Tay Beng Swee. Tay Beng Swee was available to the defence if it wished to call him.

In my view there is no substance in this ground of appeal.

I now come to what is really the main ground of this appeal — was the learned District Judge right in coming to the decision, on the evidence, that the appellant dishonestly disposed of the 3,000 Modern Housing shares of Sin Chew?

The appellant complains that no evidence was called by the prosecution to establish the value of the shares at the date of the sale in December, 1972, but there was no onus on the prosecution to establish the actual value of the shares at the date of sale and it was not necessary for the prosecution to prove that the appellant had specific knowledge of what the actual value of the shares was. It is enough as a matter of fact that the appellant knew or must have known at the time of the sale that the shares were or might reasonably be expected to be worth substantially more than par value.

It is submitted that the learned District Judge was wrong in coming to the conclusion that "the appellant ought to have known that the value of the shares he was about to dispose of to his relatives was far greater than its face value of $100."

The evidence is this. After the Bangkok agreement the Imperial Hotel Site owned by Modern Housing was valued by a land valuer in August, 1972, on the instruction of Modern Housing. The written valuation was dated August 17, 1972. The effect of the valuation was to give the value with vacant possession as up to $16 million and to I.S.I. (the leaseholder) as between $7.1 million and $10.5 million. The investment value alone was given as between $6.3 million and $6 million. The appellant had a copy of the valuation.

Later on August 22, 1972, there were negotiations held in Hong Kong with a prospective purchaser of the whole of the capital of Modern Housing or the Imperial Hotel Site and the offer of the prospective purchaser was $8 million. The appellant and his solicitor, Mr. Foo See Juan, went to Hong Kong to take part in these negotiations at which Tay Beng Swee and his legal adviser were also present. The prospective purchaser wanted the deposit of $2.72 million made by I.S.I. as advance rental payment deducted from the $8 million offered. The appellant and Mr. Foo See Juan calculated that after payment of tax on the sale the price was too low and the appellant did not agree to the price offered and it was accordingly rejected. If the shares had been sold for $8 million the value of Sin Chew's holding of 3,000 shares would have been approximately $3 million. Even if Sin Chew was liable to pay tax on the proceeds of sale of the shares the nett proceeds for the 3,000 shares held by Sin Chew would have been at least $1.8 million *i.e.* $600 per share or six times the par value. We know that within a year after the appellant rejected the $8 million offer the Imperial Hotel Site was sold for $16 million.

The appellant knew that before December, 1972, both Sin Chew and Modern Housing were seeking the best prices possible for their properties and letters were written with the view to putting pressure on Regency Hotel Ltd. and I.S.I. and these letters were written by the appellant on the advice of Tay Beng Swee. In November, 1972, the appellant instructed Mr. Lai Pang Fee to report on the market value of the Regency Hotel site and on November 17, 1972, Mr. Lai Pang Fee reported in writing that he considered the open market value to be $1.6 million.

On November 23, 1972, the appellant sought the advice of his legal adviser, Mr. Foo See Juan, on the possibility of selling the Regency Hotel Site to a third party inspite of the agreement between Sin Chew and Regency Hotel Ltd. The advice Mr. Foo gave is recorded in his letter dated November 24, 1972. Mr. Foo was not in favour of the proposed sale to a third party as in all probability Regency Hotel Ltd. would sue Sin Chew for breach of contract. He advised that an independent valuation by a qualified valuer be obtained. (He was not told that this had already been done by Mr. Lai Pang Fee). In express terms Mr. Foo warned that "if the price is on the low side interested parties may impute fraud on the part of Sin Chew or the Directors." This advice is a clear warning to the appellant as to the dangers of disposing of assets at a low price.

The appellant did not seek the advice of Mr. Foo See Juan on the sale of the 3,000 Modern Housing shares. He did not get an independent valuation of the shares before he sold them. He did not inform Tay Beng Swee in advance of the proposed sale of these shares at par. In a matter of weeks after the warning given by Mr. Foo of the danger of selling company properties at too low a price that fraud might be imputed, the appellant sold the 3,000 Modern Housing shares to his relatives at par and on deferred terms.

The resolution of Sin Chew dated December 18, 1972, resolving that the company's investment of 3,000 Modern Housing shares be sold at par value did not name the purchaser and only the appellant and his father signed the resolution. Yet on the same day a resolution was passed by the Board of Directors of Modern Housing and signed by the appellant and his father approving the transfer of the 3,000 Modern Housing shares to the name of Dr. Goh, his wife and his mother. On December 20, 1972, the Board of Directors of Sin Chew resolved that the sale of the 3,000 Modern Housing shares at par value be made on deferred payment terms and the appellant was authorised to negotiate and conclude the deferred payment sale contracts with the purchasers. Again the name of the purchaser or purchasers were not named and there was no evidence of any negotiation at all.

The appellant and his wife visited Dr. Goh at his home in Petaling Jaya especially to get Dr. Goh, Dr. Goh's wife and mother to sign the share transfers and the deferred terms contract. Both Dr. Goh's wife and his mother knew little or nothing about these share transactions and they did not pay any money for the shares. Although the final payments were not due to be made until February, 1975, a person giving the names of Dr. Goh Kim Hwa and an address in Petaling Jaya went to a Singapore bank on December 4, 1973, and purchased three separate cashier's orders each in the sum of $100,400 Singapore and paid for them in cash in Singapore dollars. Dr. Goh did not give evidence but both his wife and his mother did.

In February, 1973, Tay Beng Swee was prepared to buy out the appellant and his family's holdings in Modern Housing calculated on a 50 - 50 basis of the issued share capital for $3.44 million but the appellant was unwilling to part with it for that sum and desired to have $4.8 million.

The first payment of $1 million to the Income Tax Department under the Bangkok agreement was made in October, 1972, and the next payment of $500,000 was not due until January 31, 1973. The daily credit balances in the banking account of each of the Company showed that there were funds available to meet the instalments as they fell due. Even if money was needed at the end of 1972 to pay the instalment the disposing of the 3,000 Modern Housing shares at par value on deferred terms could not and did not result in any significant funds becoming available.

The appellant did not sell any of the Modern Housing shares held by himself, his father or Tay Enterprise Berhad at par value or at all.

On the evidence the learned District Judge could not but be satisfied that the prosecution had produced sufficient evidence of a dishonest sale of the shares by the appellant.

The appellant complained that the learned District Judge ignored or failed to appreciate the appellant's statement that he had acted on the advice of his solicitor Mr. Foo See Juan in disposing of the 3,000 Modern Housing shares. It is said that Mr.

Foo in his letter on November 24, 1972, gave an equivocal advice. Mr. Foo stated in his letter:

"In view of the possibility of Regency succeeding in a suit against Sin Chew it would be prudent to transfer all remaining assets of Sin Chew. We would therefore advise you to make a careful study of the remaining assets and have them transferred as soon as possible, preferably before the sale of the abovementioned properties is completed."

The learned District Judge rejected the appellant's plea that he had disposed of these shares on legal advice. Mr. Foo in his evidence made plain that he was not dealing with anything but landed property; that he was not asked to consider nor did he consider the sale of any shares at all. It is for the appellant to show that he sought the advice of Mr. Foo as to the sale of these shares at par and this he has not done.

The appellant in his written statement said that before selling the 3,000 Modern Housing shares he consulted Mr. Wong Kum Seng. His statement reads:

"I discussed the matter further with Mr. Wong Kum Seng who was formerly the Assistant Vice-President of the Bank of America and sought his opinion on the price of the 3,000 Modern Housing shares. I knew that, as a banker, he was familiar with companies and their shares and the mechanics of valuation.

Mr. Wong asked me for the latest available balance sheet of the company for his perusal. I told him about the terms of the Bangkok settlement and our future tax problems, and, also, showed him Mr. Lai Pang Fee's valuation of the Imperial Hotel property and the relevant files. After asking me for explanations to various items in the balance sheet, he did some calculations and told me that, in view of the massive tax problems of the company, I would be fortunate if I could dispose of those shares at par value. He expressed some doubts as to whether I could find any willing buyers."

However, Mr. Wong was not called by the appellant as a witness.

According to the appellant's own computation each share of Modern Housing was worth $79 to $80 in December, 1972, but his computation cannot be supported.

The appellant called two experts who submitted their reports evaluating the Modern Housing shares as at the end of December, 1972. One expert, a practising accountant, valued the shares at NIL, $116.49 and $226.70 respectively based on the estimated values of the Imperial Hotel Site at $6.3 million, $9 million and $10.5 million, while the other expert, who was not a practising accountant, valued them in all three cases at NIL worth. The appellant complained that the learned District Judge rejected the evidence of these two experts for an erroneous reason. The learned District Judge had said:

"Of course there was nothing wrong in their arithmetic. They had been given a rush job and may be did not have sufficient time to make the necessary investigation to satisfy themselves on certain factors which were supplied to them by the junior counsel for the appellant and which they readily accepted as undisputed facts which existed at the end of 1972."

The fact is that the informations given by junior counsel to them were incomplete and some of them were by no means undisputed facts but matters which the court eventually had to decide on the evidence produced in court.

The learned District Judge saw and heard the witnesses and she had the opportunity to compare them and she preferred the evidence of Mr. Reggie Myint Thein, the prosecution witness. The reasons for the rejection of the evidence of the defence witnesses as to the value of the shares were amply justified.

There are other points raised by counsel for the appellant but there is no substance in any of them.

The appellant had direct and full knowledge of all the affairs of the two companies, Sin Chew and Modern Housing, and on the whole of the evidence there can be no doubt that the appellant knew at the time he sold those shares that the shares were worth substantially more than par value and the appellant was rightly found guilty on all the three charges and convicted.

The appellant complains that the sentence was manifestly excessive.

Counsel for the appellant says that this case arose from a family dispute between the two Tays but that the two families have since been reconciled and that outstanding disputes in other cases involving the parties have been settled or will be settled. Counsel further says that as regards the shares no financial loss had been sustained by anyone outside the family and that the purchasers of the shares have since undertaken to hand them back. Counsel submits that having regard to all these the appellant ought not to be given a prison term.

The question of sentence is often a difficult one for a trial judge. It is the duty of counsel if he wishes to seek leniency for his client to make a plea in mitigation and see that all relevant factors on the question of sentence are drawn to the attention of the court. In this case, however, after the appellant was found guilty and convicted Junior Counsel (who appears for the appellant in this appeal) declined an invitation by the learned District Judge to enter a mitigation plea for the appellant.

The sooner directors realise that the Companies Act applies to private companies whether family or not the better it is. A company is not a mere puppet of the directors and the people interested in the proper and lawful conduct of the company are not just the directors and the shareholders. All sorts of people have a legitimate and proper interest in the well-being and preservation of the assets and properties of a company, like creditors and persons having dealings with the company.

In this case the appellant had abused his authority and abused it criminally.

I can see no good reason to interfere with the sentence.

In the result this appeal is dismissed.

Appeal dismissed.

Solicitors: *Francis T. Seow; Allen Yau.*